**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1201 OF 1989

The State of Maharashtra ...Appellant
Vs.
Shri Gajanan Budhya Thakur ...Respondent

WITH
FIRST APPEAL NO.1202 OF 1989

The State of Maharashtra ...Appellant
Vs.
Shri Gokul Hari Patil ...Respondent

AND
FIRST APPEAL NO.1204 OF 1989

The State of Maharashtra ...Appellant
Vs.
Shri Balya Janardan Patil
(since deceased) through
legal representatives ...Respondents

Mr K.K. Tated, A.G.P. for the Appellant in all three Appeals.
Mr R.P. Lote for the Respondents in all three Appeals.

**CORAM : ABHAY S. OKA, J.**
**DATE : APRIL 04, 2006.**

**JUDGMENT:**

1. Heard Shri Tated, learned A.G.P. for the State and Shri Lote appearing for the Respondents. These Appeals are preferred by the State of Maharashtra taking exception to the Judgments and Awards passed by the learned Joint District Judge, Thane in Reference Proceedings under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894). The subject matter of the First Appeal No.1201 of 1989 is the judgment and award passed in Land Acquisition Reference No.67 of 1985. The impugned Judgments in the other two Appeals are in Land Acquisition Reference No.63 and 70 of 1985 which

which have been decided on the basis of Judgment in the Land Acquisition Reference No.67 of 1985. Therefore, I am referring to the facts of the case in First Appeal No.1201 of 1989. There is no dispute between the parties that lands which are subject matter of all the three Appeals are similarly situated.

2. These three Appeals pertain to lands at village Sanpada in Taluka and District Thane. In case of Land Acquisition Reference No.67 of 1985 notification under section 4 was issued on 04th February, 1970. In case of Land Acquisition Reference No.63 of 1985, notification under section 4 of the said Act of 1894 was issued on 10th October, 1968 and in case of Land Acquisition Reference No.70 of 1985 the notification under section 4 of the said Act of 1894 is issued on 04th February, 1970. In all the three cases the Awards under Section 11 of the said Act of 1984 were made in May 1985. The Special Land Acquisition Officer offered market value at the rate at Rs.7/- per sq. meter to the claimant in Land Acquisition Reference No.63 of 1985 and at the rate of Rs.6/- per sq. meter in the other two cases. The Acquisition in all the three cases is for the same public purpose, namely, for development of the satellite city of Navi Mumbai. The Reference Court has fixed the market value at the rate of Rs.15/- per sq. mtr.

3. The learned A.G.P. appearing for the State submitted that the market value fixed by the Trial Court is on the higher side. He has invited my attention to the evidence on record and submitted that there was no evidence on record to come to the conclusion that market value on the relevant date was Rs.15/- per sq.mtr. He submitted that as the acquired lands on the date of issuance of Section 4 notification were undeveloped lands, a deduction on account of development charges ought to have been made. He pointed out that the learned Trial Judge has granted solatium even on the component of interest under section 23(1-A) of the said Act of 1984 and infact solatium is payable only on the market value fixed under section 23(1) of the said Act of 1984.

4. Shri Lote appearing for the Respondents-original claimants have invited my attention to various sale instances produced and proved the claimants. He has taken me through the notes of evidence. He submitted that no interference is called for with the impugned Judgments and Awards. He placed reliance on the decision of learned Single Judge of this Court dated 19th November, 2003 in the First Appeal No.587 of 1989 (State of Maharashtra Vs. Harishchandra Pandurang Patil & Ors) and other connected Appeals. He pointed out that the learned Single Judge has confirmed the market value at the rate of Rs.15/- per sq. mtr. and at the rate of Rs.18/- per sq. mtr. for the lands at village

Sanpada which were notified for acquisition on the same date for the same public purpose.

5. I have considered the submissions made by the learned Counsel appearing for the parties. It will be necessary to refer to the evidence led by the claimants. The evidence has been recorded in common in Land Acquisition Reference No.67 of 1985. One Satyawan Gajanan Thakur, son of the claimant in Land Acquisition Reference No.67 of 1985 has given the evidence regarding location of village Sanpada. He has stated that Sanpada village is by the side of Thane-Belapur Road. The Sion-Panvel highway is located on the western side of Sanpada. He stated that Sanpada village is situated at the junction of Thane-Belapur road and Sion-Panvel highway. He stated that from the year 1964 industrial development was started in village Sanpada and industries like Phizer, Herdilia etc. were set up in the village in the year 1964. He stated that about 40 to 50 industries were set up in the area of village Sanpada. So far as location of village Sanpada and development of village from 1964 is concerned, there is no specific cross-examination made by the learned District Government Pleader. In the cross-examination he stated that his land is located at the distance of 700-800 ft. from Sion-Panvel highway. He stated that lands of Balya Janardan Patil, Ramdas Kanha Dalvi and Gokul Hari Patil are at a distance of about 700-800 ft. from his land. One Gokul Hari Patil (the

Respondent No.1 in First Appeal No.1202 of 1989) was also examined as a witness by the claimants. He also described the location of village Sanpada and acquired lands. No evidence has been led by the State Government.

6. The claimants have placed reliance on document at Exhibit 11 which is the Judgment of the District Court in Land Acquisition Reference No.03 of 1987 delivered on 27th May, 1987. The said Judgment is in respect of a land acquired from village Turbhe which is owned by one Kashinath Rama Gharat. The said land was notified for acquisition on 10th October, 1968 for the development of satellite town of New Mumbai. In the said case, the Reference Court awarded market value at the rate of Rs.15/- per sq.mtr. Witness Satyawan Gajanan Thakur has referred to the land which is subject matter of the said decision and has stated that the said land of Kashinath is situated at a short distance from the acquired land. The learned Trial Judge has noted that the learned District Government Pleader has not pointed out whether any Appeal is preferred against the said judgment.

7. Reliance is placed by the claimant on sale instance in the form of Sale Deed dated 05th February, 1969 executed by Pandharinath Ambaji Patil, Dashrath Ambahi Patil, Bhau Ambaji Patil and others in favour of Sneha Co-operative Housing Society. The Sale Deed relates to land bearing Gat No.749 admeasuring 1950

sq. mtr. from village Turbhe. The said land was sold under the said Sale Deed at the rate of Rs.15/- per sq. yard. Witness Satyawan has stated that land subject matter of the said Sale Deed is located at a distance of about only about one half furlong (i.e. about 200 meters) from the acquired land. The claimants have placed reliance on decision of the Division Bench of this Court in First Appeal No.626 of 1977 (Govind Padu Patil Vs. Special Land Acquisition Officer) and other connected matters. The said decision was rendered on 30th March, 1982. Perusal of the said Judgment which is at Exhibit 12 on the record of the Reference Court shows that challenge before the Division bench was to the Awards made under section 18 of the said Act of 1894 inrespect of the lands situated at village Turbhe which were notified for public purpose of development of satellite city of New Mumbai by virtue of notifications under section 4 of the said Act of 1894 issued on 10th October, 1968 and 04th February, 1970. The Division Bench held that market value of the lands covered by group of Appeals is between Rs.12 per sq. mtr. to Rs.18/- per sq.mtr. In the Judgments which were impugned before the Division Bench, a reliance was placed on the same sale instance of Sale Deed dated 5th February, 1969. The Division Bench held that the said sale instance can be used for comparison while fixing the market value of the acquired land.

8. Lastly, in the judgment impugned in these

Appeals, a reliance is placed on Sale Deeds at Exhibits 10 to 12 which are admitted in evidence on the basis of consent granted by the District Government Pleader. Out of said Sale Deeds in case of one the market value reflected is Rs.15/- per sq. yard (approximately equivalent to Rs.18/- per sq. meter) for the sale transaction of the year 1968.

9. The learned Single Judge of this Court in his decision in the case of State of Maharashtra Vs. Harishchandra P. Patil & Ors. (Supra) dealt with the issue of market value of the lands from the same village Sanpada which were acquired for New Bombay Project. In the Appeals before the learned Single Judge, the dates of Section 4 notification were also 10th October, 1968 and 04th February, 1970. In case of certain lands the learned Single Judge confirmed the decision of the Reference Court of awarding market value at the rate of Rs.15/- per sq.mtr. and in one case he confirmed the market value at the rate of Rs.18/- per sq. mtr.

10. The Apex Court in the case of **State of Madras Vs. A.N. Nanjan (1976) 1 Supreme Court Cases Page 973)** held that if the land involved in the award is comparable land in the reasonable proximity of the acquired land, the rates found in the said document will be a reliable material to afford a basis to work upon determination of compensation on a later date. The Apex court dealt with the case of land acquired

from village Mulligoor, District Nilgiri, Tamil Nadu. The High Court had relied upon a sole instance of a Sale Deed of the land from village Bikatti which was at a distance of 2 to 4 furlongs from village Mulligoor. The Apex Court approved the approach of the High Court of relying upon the sale instances of the land from adjoining villages. It is well settled position of law as reflected from the decision of the Apex Court in the case of **Krishna Yachendra Bahadurvaru Vs. The Special Land Acquisition Officer reported in A.I.R. 1979 Supreme Court Page 869** that estimation of market value in many cases must depend largely upon evaluation of many imponderables and hence it must necessarily be to some extent matter of conjuecture or guess.

11. In the present case the evidence which is brought on record by the claimants shows that the land which is subject matter of Sale Deed dated 05th February, 1969 is from village Turbhe which is situated within reasonable proximity of the acquired land. Witness Satyawan has deposed that the said land is situated at a distance of half furlong (about 200 meters) from the land subject matter of these Appeals. There is no cross-examination on the said aspect. In the evidence the witnesses have stated about location of villages Turbhe and Sanpada. It is not in dispute that large number of lands from both the villages have been notified for acquisition by notifications of the same date for the same public purpose. Therefore, the

sale deed can be considered as a relevant piece of evidence for determining market value in the present case. The evidence of the said sale instance viz. Sale Deed dated 05th February, 1969 has been accepted by the Single Judge in his aforesaid decision in the case of State of Maharashtra Vs. Harishchandra Pandurang Patil (Supra). It must be noted here that by the said decision this Court has confirmed an Awards where market value of land from village Sanpada which was fixed at the rate of Rs.18/- per sq.mtr. In the Sale Deed which is referred to above, the market rate as on 05th February, 1969 is about Rs.18/- per sq. mtr. It must be noted here that the Sale Deed recites that a part of the consideration was paid to the vendor on 20th February, 1968 i.e. nearly a year before execution of Sale Deed. Therefore, the market value fixed appears to be of February 1968 as the bargain appears to be of February 1968 . Thus, it can be safely stated that the market value of the acquired lands in these Appeals on the relevant date was more than Rs.15/- per sq. meter.

12. It is true that deduction on account of development charges is not made by the learned Trial Judge. However, in the facts of these cases the evidence on record suggests that the market value awarded by the Trial Court is less than the market value as reflected from the evidence. In case of acquisition of lands for New Bombay Project a Division Bench of this court has held that deduction of 10% is

required to be made in respect of the lands situated in various villages in Taluka Panvel, District Raigad. It is apparent that market value of the acquired lands in these three Appeals is to some extent more than Rs.15/- per sq. mtr. Therefore, in my view, it is not necessary to make any deduction from the market value of Rs.15/- awarded by the Trial Court. There is no cross Appeal or cross objection filed by the Respondents. The impugned Judgments and Awards to that extent needs no interference.

13. On plain reading of paragraph 16 of the judgment in Land Acquisition Reference No.67 of 1985, it appears that learned Judge has made an error while calculating the amount of compensation. The market value at the rate of Rs.15/- per sq. mtr. comes to Rs.14,790/- and solatium at the rate of 30% of the market value is taken at Rs.12,556.71/-. The mistake has obviously occurred as for computing the solatium, the learned Judge has taken into account component of interest under section 23(1-A) together with the market value. The solatium is payable under section 23(2) only on the market value determined under section 23(1) of the said Act 1894. Solatium is not payable on interest amount under section 23(1-A) of the said Act of 1894.

14. Shri Lote appearing for the claimants submitted that in many other cases this court has not interfered with the same method of calculation adopted

by the Trial Court. However, he is unable to point out any decision of this Court where this question as to correctness of the method of calculation of solatium was canvassed and is decided against the State Government. No decision is pointed to me which takes a view that solatium under section 23(2) is payable on the component of interest under section 23(1-A) of the said Act of 1894. On the contrary in the decision of the Apex Court in State of Punjab Vs. Mohindersingh Randhawa (1993 Supp(1) S.C.C. Page 49) it has been expressly held that while calculating the solatium, the amount payable under section 23(1-A) cannot be taken into account.

15. In the present case, the claimants will be entitled to the market value at the rate of Rs.15/- per sq. mtr, interest under section 23(1-A), solatium under section 23(2) on the market value fixed at the rate of Rs.15/- per sq. mtr. In addition to this, the claimants will be entitled to interest under section 28 of the said Act of 1894 on the components of market value, interest under section 23(1-A) and the solatium under section 23(2).

16. Hence, I pass the following order:

**FIRST APPEAL NO.1201 OF 1989**

A] The operative part of the impugned Judgment and Award is modified and is substituted by

following:

. "The claimants are entitled to market value at the rate of Rs.15/- per sq. mtr. and all statutory benefits thereon under section 23(1-A), 23(2) and Section 28 of the Land Acquisition Act, 1894. The claimants are entitled to proportionate costs of Reference."

B] The Reference Court will calculate the amount of compensation payable to the claimants in the light of observations made in paragraph No.15 of this Judgment within a period of four months from the date of receipt of writ of this order.

C] The Appellant-State will pay costs of this Appeal to the Respondents.

D] Certified copy is expedited.

**FIRST APPEAL NO.1202 OF 1989**

A] The operative part of the impugned Judgment and Award is modified and is substituted by following:

. "The claimants are entitled to market value at the rate of Rs.15/- per sq. mtr. and all statutory benefits thereon under section 23(1-A), 23(2)

and Section 28 of the Land Acquisition Act, 1894. The claimants are entitled to proportionate costs of Reference."

B] The Reference Court will calculate the amount of compensation payable to the claimants in the light of the observations made in paragraph No.15 of this Judgment within a period of four months from the date of receipt of writ of this order.

C] The Appellant-State will pay costs of this Appeal to the Respondents.

D] Certified copy is expedited.

**FIRST APPEAL NO.1204 OF 1989**

A] The operative part of the impugned Judgment and Award is modified and is substituted by following:

. "The claimants are entitled to market value at the rate of Rs.15/- per sq. mtr. and all statutory benefits thereon under section 23(1-A), 23(2) and Section 28 of the Land Acquisition Act, 1894. The claimants are entitled to proportionate costs of Reference."

B] The Reference Court will calculate the amount

of compensation payable to the claimants in the light of the observations made in paragraph No.15 of this Judgment within a period of four months from the date of receipt of writ of this order.

C] The Appellant-State will pay costs of this Appeal to the Respondents.

D] Certified copy is expedited.

**JUDGE**